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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JAMES DONATO, JUDGE

IN RE CAPACITORS ANTITRUST) NO. C 14-3264 JD
LITIGATION.)

AASI BENEFICIARIES' TRUST,)
BY AND THROUGH KENNETH A. WELT,)
LIQUIDATING TRUSTEE,)
)
Plaintiff,)
VS.) NO. C 17-03472
)
AVX CORPORATION, et al.,)
)
Defendants.)
_____)

IN RE CAPACITORS ANTITRUST) NO. MD-17-02801-JD
LITIGATION (No. III).)

AVNET INCORPORATED,)
)
Plaintiff,)
VS.) NO. C 17-07046-JD
)
HITACHI CHEMICAL COMPANY, LTD.,)
et al.,)
)
Defendants.)
_____)

Wednesday, May 9, 2018
San Francisco, California

TRANSCRIPT OF PROCEEDINGS

Reported By: **BELLE BALL, CSR 8785, CRR, RDR**
Official Reporter, U.S. District Court

(Cases and Appearances continued, next page)

BENCHMARK ELECTRONICS, INC.,)	
et al.,)	
)	
Plaintiffs,)	
)	
VS.)	NO. C-17-07047-JD
)	
AVX CORPORATION, et al.,)	
)	
Defendants.)	
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DIGI-KEY CORPORATION,)	
)	
Plaintiff,)	
)	
VS.)	NO. C 18-00184-JD
)	
AVX CORPORATION, et al.,)	
)	San Francisco, California
Defendants.)	
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(Appearances continued, next page)

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Wednesday - May 9, 2018

2:09 p.m.

P R O C E E D I N G S

THE CLERK: All rise.

Please be seated.

THE COURT: Good afternoon.

THE CLERK: Calling Civil 14-3264, In Re Capacitors Antitrust Litigation; Civil 17-3472, the AASI Beneficiaries Trust, by and through Kenneth Welt, Liquidating Trustee, versus AVX Corporation; Multi-District Litigation 17-2801, In Re Capacitors Antitrust Litigation, No. III; Civil 17-7046, Avent Incorporated versus Hitachi Chemical Company, Limited; Civil 17-7047, Benchmark Electronics, Incorporated versus AVX Corporation; and Civil 18-184, Digi-Key Corporation versus AVX Corporation.

Counsel?

MR. ZAPALA: Good afternoon, Your Honor. Adam Zapala, Cotchett, Pitre & McCarthy, for the indirect purchaser plaintiffs.

MR. WILLIAMS: Good afternoon, Your Honor. Steve Williams, Joseph Saveri Law Firm, for the direct purchasers.

THE COURT: You're back. You switched teams.

MR. WILLIAMS: (Nods head)

MR. ZAPALA: Well, not teams. He's on the same team, it's just a different group.

THE COURT: While we're on the record, would you like

1 to tell us why?

2 No, no, no, I'm just --

3 (Laughter)

4 **MR. WILLIAMS:** No, thank you.

5 **UNIDENTIFIED MAN:** We'd like to hear that.

6 **MR. LAMBRINOS:** Demetrius Lambrinos, also of Joseph
7 Saveri Law Firm, direct purchaser plaintiffs.

8 **MR. DALLAL:** James Lallal, also of Joseph Saveri Law
9 Firm, direct purchaser plaintiffs.

10 **MR. TOMPKINS:** Charles Tompkins for Flextronics.

11 **MR. WAGNER:** Scott Wagner behalf of AASI, Avnet and
12 Benchmark.

13 **MR. SINGER:** Good afternoon, Your Honor. Stuart
14 Singer, Boies, Schiller & Flexner, on behalf of Arrow
15 Electronics, Inc.

16 **THE COURT:** Oh, is that the one that just arrived?

17 **MR. SINGER:** Yes, we just joined as --

18 **THE COURT:** Okay. All right.

19 **MS. LAU:** Good afternoon, Your Honor. Bonnie Lau for
20 defendant Matsuo Electric Company, Limited.

21 **MR. PAPENDICK:** Good afternoon, Your Honor. Ian
22 Papendick for Panasonic and the Sanyo defendants.

23 **MR. MARTINEZ:** Hello, Your Honor. Michael Martinez
24 for Nichicon defendants.

25 **MR. BANK:** Good afternoon, Your Honor. Jeff Bank from

1 Wilson Sonsini for Hitachi.

2 **MR. KIDWELL:** Good afternoon, Your Honor. Robert
3 Kidwell for defendant AVX Corporation.

4 **THE COURT:** AVX. Is that right?

5 **MR. KIDWELL:** AVX.

6 **THE COURT:** AVX. All right.

7 We're going to get a number of things done today. Let's
8 start with the non-ordinary-course documents.

9 **MR. LAMBRINOS:** Your Honor --

10 **THE COURT:** All right. So, it looks like you agree
11 that we're going to drop the EC.

12 **MR. LAMBRINOS:** Yes, sir.

13 **THE COURT:** And you're going to exclude any leniency
14 program materials.

15 So my first question is: What would be left?

16 **MR. LAMBRINOS:** We believe that there's two items --
17 relevant items left, Your Honor. Item No. 1 are witness
18 statements. And Item No. 2, evidence of document alteration.

19 **THE COURT:** All right. Now, why would -- the EC
20 persuaded you for dropping everything. I understand that, you
21 know, the other countries didn't write the same type of letter,
22 but aren't the EC's reasons applicable to everybody?

23 **MR. LAMBRINOS:** Your Honor, the letters that were
24 written by the EC and the other regulators were written to
25 individual defendants, and only apply in individual instances.

1 And they're tailored in that sense.

2 We targeted the regulators we thought had the most
3 relevant information. For example, the Taiwan FTC, there's no
4 letter. Japan FTC and Korean FTC, there are letters, but they
5 are written only to individual defendants. The JFTC letter's
6 only written to Vishay, the Korean FTC letter's only written to
7 Sanyo. So they have a comity interest, they have a stated
8 comity interest, but so do we, in enforcing our antitrust laws.
9 And they do not have an ongoing antitrust investigation right
10 now.

11 And we believe that we need the witness statements to fill
12 in gaps in the discovery record from the dozens of unavailable
13 witnesses, former or supposedly former witnesses, at these
14 companies.

15 **THE COURT:** Well, I mean, the EC says that these
16 disclosures would just threaten their competition
17 investigation, strategy, and their own prosecutorial
18 discretion. I mean, that's not unique to the defendant.
19 That's -- that's for everything they do.

20 So why wouldn't that be the same for all the competition
21 agencies?

22 **MR. LAMBRINOS:** The ET materials (verbatim) and the
23 way that the language is presented in the letter is slanted
24 towards the protection of the leniency materials. And they do
25 talk about witness statements, generally. But the focus here

1 is on leniency, which is why we dropped that request, which is
2 why we're not focusing on the EC.

3 So, you know, there's -- I would just be repeating myself,
4 but they didn't -- they can't assert a comity interest on
5 behalf of a different government that didn't state one. And so
6 Taiwan, China --

7 **THE COURT:** I'm not saying that. I'm just saying that
8 the reasons that motivated the EC to say what it said apply to
9 all of the commissions. It affects and interferes with their
10 national investigatory strategies; tips their hands in
11 potentially unfair ways.

12 The DOJ in our country certainly wouldn't give you that
13 material. So why should the DOJ equivalent in the foreign
14 countries do it?

15 **MR. LAMBRINOS:** I would start off by saying that the
16 EC letter, first, is only written to one defendant, NEC Tokin.
17 This is the EC letter that was attached as Exhibit B to
18 defendant's letter. It is only written to NEC Tokin.

19 And then the second EC letter -- excuse me -- is only
20 written to Holy Stone.

21 **THE COURT:** Ms. Lau?

22 **MR. LAMBRINOS:** This is the second EC letter that was
23 attached as Exhibit C.

24 **THE COURT:** All right. Ms. Lau? Let's hear from the
25 defendant.

1 **MS. LAU:** Your Honor, I think you have already
2 answered that question. The concerns that are articulated by
3 each of the regulators in this case are equally applicable to
4 all defendants.

5 It's irrelevant that only a single defendant's counsel
6 approached that particular regulator. We did that simply,
7 Your Honor, in the interests of efficiency.

8 But what they have expressed, their concerns, the
9 disclosure would harm or impede ongoing cartel investigations,
10 and competition enforcement, more generally. And then, their
11 other concern.

12 I don't think that there's really a distinction here
13 between leniency materials (indicating quotation marks), if you
14 will, and any other company being subject to a competition
15 investigation because, of course, all of these regulators, they
16 depend on the voluntary cooperation and disclosure of all of
17 the parties in front of them, not just the initial leniency
18 applicant.

19 So I think that there's really no reason that any of these
20 letters should be specific to the individual defendant that
21 petitioned. The rationale here is applicable to everyone.

22 And I think Your Honor also pointed out, in the KFTC's
23 letter, you know, they really highlight the global cooperation
24 that goes on now between these competition authorities. And
25 KFTC specifically expresses that harm to one agency would be

1 harm to all.

2 And the bottom line is Your Honor's right. We've already
3 come to an explicit agreement with the Department of Justice
4 here -- it's memorialized in 630 and 632 -- which states that
5 no non-ordinary-course documents or communications should be
6 divulged to the plaintiffs here. And you're exactly right.
7 These foreign regulators are asking for no more than to be
8 treated just the same as the DOJ.

9 **THE COURT:** All right.

10 Mr. Lambrinos, last word?

11 **MR. LAMBRINOS:** The last word from us, Your Honor, is
12 that we have a list of former employees from the defendants
13 (Indicating) who are unavailable for deposition. And all we're
14 asking for is a discrete set of documents which are these
15 witness statements. And we don't even know the list of witness
16 statements; we don't even know who the witnesses are that
17 provided the statements.

18 We can certainly match that up against the list of former
19 employees we have (Indicating), to narrow down the number of
20 witness statements we're seeking so it could be narrowly
21 tailored. But that's how we envision the statements being
22 useful.

23 **THE COURT:** Well, you can ask --

24 **MR. LAMBRINOS:** They have not --

25 **THE COURT:** You can ask: Identify the witnesses who

1 gave statements to the EC.

2 **MR. LAMBRINOS:** They will not -- they're not -- they
3 will provide that information, Your Honor. That's part of the
4 reason we're here.

5 **THE COURT:** Why not?

6 **MS. LAU:** Your Honor, that's one of the categories of
7 communication that these foreign regulators have expressed
8 opposition to disclosure of.

9 I can represent, with respect to Matsuo, at least -- I
10 haven't polled all of the other defendants -- but I'm not aware
11 of a single former employee that has been made available to
12 other regulators that hasn't similarly been made available in
13 the civil litigation.

14 So I think this concern is pure supposition, and it's not
15 supported by anything in the record.

16 **THE COURT:** Well, I don't think the identities of the
17 witnesses are subject to suppression. So you can certainly ask
18 that. That's it, just the identity of the witnesses who gave
19 statements to the regulators.

20 But I'm going deny the rest of the request.

21 **MR. LAMBRINOS:** Can we get a date by which they have
22 to produce the names of the witnesses? Because we asked for
23 that as part of this motion, so it's part of the relief
24 requested.

25 Can the defendant provide that for all regulators, all

1 interviews that were conducted, and all names, to us in 15
2 days?

3 **MS. LAU:** Respectfully, Your Honor, I do think that
4 the foreign regulators have expressed opposition to this. So
5 we would actually request time to go back to each of these
6 regulators, and get their positions on the disclosure of the
7 witness names.

8 **THE COURT:** I'm not interested in their positions.
9 The identities of the witnesses will be produced.

10 Two weeks, is that sufficient? Three weeks? How long do
11 you need? How long does it take? It doesn't take that long.
12 We are coming to the end here, so let's -- we've got to be a
13 little bit brisk.

14 **MS. LAU:** I think two weeks is fine, Your Honor.

15 **THE COURT:** All right. So 14 days from today. It's
16 just the names, that's it.

17 **MR. LAMBRINOS:** Thank you.

18 **THE COURT:** Nothing else. No dates, no length of
19 interview, nothing. Just who said something to somebody.

20 Okay? All right.

21 **MR. LAMBRINOS:** Thank you.

22 **THE COURT:** In all other respects -- so looking at
23 that list, this is No. 1.

24 **MR. LAMBRINOS:** Yes.

25 **THE COURT:** Motion to Compel, and No. 2, which

1 apparently is the --

2 **MS. LAU:** It's the same, Your Honor.

3 **THE COURT:** -- the oral information equivalent. Both
4 are denied, with the exception of the identity of the
5 witnesses.

6 **MR. LAMBRINOS:** Thank you, Your Honor.

7 **THE COURT:** All right. No. 3.

8 **MS. LAU:** I'm sorry, Your Honor. One further
9 clarification.

10 **THE COURT:** Yes.

11 **MS. LAU:** I just want to -- with respect to the names
12 of the witnesses, you are asking the defendants to identify the
13 names of any former employees that were made available to
14 communicate with a foreign regulator.

15 Is that correct?

16 **THE COURT:** Yes.

17 **UNIDENTIFIED MAN:** No.

18 **MR. LAMBRINOS:** Everyone.

19 **THE COURT:** One said yes, and one said no.

20 **MR. LAMBRINOS:** Everyone who was interviewed.

21 **MR. ZAPALA:** From the IPP's perspective, we want
22 identification of anyone -- any employee, former or not, who
23 was interviewed by the regulator.

24 **MR. LAMBRINOS:** Correct.

25 **MR. MARTINEZ:** Frankly, Your Honor, that's just a

1 back-door attempt, just here at the end, when the original
2 request is based just on former employees.

3 The sole rationale is based just on former employees that
4 they don't have access to, because supposedly they could not be
5 deposited in the United States.

6 We've already identified --

7 **THE COURT:** The original request was former employees?

8 **MR. LAMBRINOS:** No, that's not right. It's for all
9 non-ordinary-course documents. And we are asking now for all
10 of the names of the people that were interviewed.

11 **THE COURT:** Where is -- do I have the request?

12 **MR. LAMBRINOS:** Yes. If we need to go back to the
13 request, in the original --

14 **MR. MARTINEZ:** If I may, Your Honor?

15 **THE COURT:** What's the ECF number?

16 **MR. LAMBRINOS:** I'll pull it up right now, Your Honor.
17 We attached it so that the -- the motion is ECF 1943.

18 **THE COURT:** Yes.

19 **MR. LAMBRINOS:** And Exhibit 1 to that is our second
20 set of RFPs.

21 **THE COURT:** And which RFP is it?

22 **MR. LAMBRINOS:** And it's RFP No. 33.

23 I'll read it?

24 **THE COURT:** No, no. I have it.

25 **MR. MARTINEZ:** Just to clarify, my comments were made

1 to what Mr. Lambrinos said at the beginning of his motion right
2 here. So it will be in the transcript.

3 **THE COURT:** Let's see. This doesn't ask for the
4 names; it just asks for the documents. You can do an
5 interrogatory saying: Identify --

6 **MR. LAMBRINOS:** Interrogatory No. 35, Your Honor.
7 That's the second item that's at issue today, since the
8 corollary --

9 **THE COURT:** Wait. You said Exhibit 1. That's the
10 request for production.

11 **MR. LAMBRINOS:** Right. So let me back this up a
12 little bit. So, RFP 33 asks for all non-ordinary-course
13 documents produced to foreign regulators. They have already
14 produced the ordinary-course documents. The non-ordinary
15 course documents is everything that's left.

16 We are narrowing that to just the witness statements and
17 the evidence of document alteration by Taitso. Those are the
18 only two items we want.

19 **THE COURT:** That is all denied. So, I asked you a
20 question.

21 **MR. LAMBRINOS:** Yes.

22 **THE COURT:** The objection was made that you previously
23 asked only for the names of former employees who had possibly
24 been witnesses.

25 And you said: No, that's not right. We asked for former

1 and present.

2 And I said: Show me, and you guided me to RFP 33 which
3 was not responsive.

4 So what request or interrogatory says identify the names
5 of the witnesses?

6 **MR. LAMBRINOS:** Interrogatory No. 35, which is also at
7 issue today.

8 **THE COURT:** Where is it? What tab is it?

9 **MR. LAMBRINOS:** That is ECF No. 1954, and it is
10 Exhibit A.

11 **THE COURT:** Wait, that's not attached to 1943?

12 **MR. LAMBRINOS:** Sorry, no. So there's two separate
13 motions. There was -- 1943 is just RFP 33.

14 **THE COURT:** Oh, is that No. 2?

15 **MR. LAMBRINOS:** Yes, exactly.

16 **THE COURT:** Okay, which one for 1954?

17 **MR. LAMBRINOS:** Exhibit A.

18 **THE COURT:** Okay.

19 **MR. LAMBRINOS:** 35 is the interrogatory at issue.

20 **THE COURT:** 35?

21 **MR. LAMBRINOS:** 35, Interrogatory 35.

22 **THE COURT:** All right.

23 **MR. LAMBRINOS:** State all facts.

24 **MS. LAU:** And Your Honor, what you'll see is that --

25 **THE COURT:** Hold on, everybody. Just let the old

1 judge have a second here.

2 **MS. LAU:** Sure.

3 (The Court examines document)

4 **THE COURT:** This says "State all facts." It doesn't
5 say "Identify the people."

6 **MS. LAU:** Exactly, Your Honor.

7 (Multiple simultaneous speakers)

8 **MR. LAMBRINOS:** "...interview or discussion with a
9 current or former employee," which is the last line of the
10 first paragraph.

11 **THE COURT:** Well, just ask in an interrogatory, and
12 get the names.

13 **MR. LAMBRINOS:** So we'll serve an interrogatory asking
14 for all of the names of everybody --

15 **THE COURT:** Just do another one. Just do another
16 names interrogatory.

17 **MR. LAMBRINOS:** We will do that. Thanks, Your Honor.

18 **THE COURT:** All right. Yes.

19 **MR. LAMBRINOS:** Thank you.

20 **THE COURT:** Okay. All right. No. 3.

21 **MS. LAU:** Your Honor?

22 **THE COURT:** Yes.

23 **MS. LAU:** So they have already vastly exceeded their
24 35 interrogatories. And I do want to highlight for the Court
25 that Interrogatory 35 does not ask for what they are asking

1 for.

2 **THE COURT:** I understand that. But we're --

3 **MS. LAU:** And that's one of the factors of the --

4 **THE COURT:** Hold on. When I start, you stop. Okay?

5 All right? When I start, you stop.

6 We're resolving a motion to compel. So that is -- they're
7 going to get the interrogatory. I don't care how many they
8 have had already.

9 All right?

10 **MR. LAMBRINOS:** Thank you.

11 **THE COURT:** Get that done in two weeks. So serve it
12 today; get it done in two weeks.

13 All right.

14 **MR. LAMBRINOS:** Yes, sir.

15 **THE COURT:** All right. Item No. 3.

16 **MR. PAPENDICK:** May I ask for a clarification? Ian
17 Papendick for Panasonic (Inaudible).

18 **THE COURT:** Yes, Mr. Papendick.

19 **MR. PAPENDICK:** Plaintiffs said that they're not
20 looking for information submitted as part of a leniency
21 application. And can I understand that this order does not
22 apply --

23 **THE COURT:** Yes.

24 **MR. PAPENDICK:** Thank Your Honor.

25 **THE COURT:** This is the non- -- non-lenieny,

1 non-ordinary-course-of-business witnesses. Just the names.

2 **MR. PAPENDICK:** So the names -- the names do -- even
3 for the leniency.

4 **THE COURT:** No, not the leniency. They're out. So
5 anybody who is not leniency-related. It seems to me there's
6 probably nobody left. But, they can ask.

7 Okay? All right.

8 **MR. PAPENDICK:** Understood. Thank you, Your Honor.

9 **THE COURT:** Okay. No. 3. Internal investigation
10 documents.

11 **MR. LAMBRINOS:** Yes, Your Honor.

12 Well, so, to just recall where the stage was set on this,
13 internal investigation documents got boiled down to apology
14 documents, and that they were ordered to -- defendants were
15 ordered to produce those documents.

16 And there was a question to the Court of whether or not we
17 would get the apologies, going all the way through the present,
18 meaning --

19 **THE COURT:** Let me -- how many of these apology
20 documents are there?

21 **MR. LAMBRINOS:** We had attached a couple to our joint
22 letter on the time period.

23 **THE COURT:** I saw that. But how many more do you
24 think there are?

25 **MR. LAMBRINOS:** I've seen in other cases, there was --

1 I'm reluctant -- there was a filing in another case in the
2 Northern District in *Batteries*, where one of the defendants in
3 this case, the plaintiffs were basically saying that that
4 defendant was producing apology letters after depositions had
5 taken place. Or contemporaneous with depositions, or just
6 before.

7 So people were being deposed, and then apologizing for
8 their conduct to their employers.

9 **THE COURT:** Oh, okay.

10 **MR. LAMBRINOS:** So we would like all of the apology
11 documents through to the present.

12 And our point on the temporal scope was we would -- 2014,
13 okay, August, 2014, fine. But we have these five carve-outs.
14 Carve-out number one is the apology documents. So that's where
15 we are with disciplinary records.

16 And I can go through the other four carve-outs, but I do
17 think they're reasonable.

18 **THE COURT:** Well, let's start with the defendant.
19 Mr. Martinez.

20 **MR. MARTINEZ:** Yes.

21 **THE COURT:** So I had expected -- somebody told me, my
22 recollection is -- and I think it's in the transcript --
23 somebody told me there was a deal in place that 2014 was a hard
24 stop. And I didn't see any evidence of that.

25 I saw some circumstantial evidence but, you know, a deal

1 is you call Mr. Lambrinos and say: Okay, so the deal is
2 nothing after August, 2014. And he says: Right.

3 That's not there.

4 **MR. MARTINEZ:** No, that's right.

5 **THE COURT:** And then you all produced hundreds of
6 thousands of documents after 2014.

7 **MR. MARTINEZ:** Let me address a couple of those
8 points, Your Honor. First, there's no court order that says
9 that there's a document request.

10 **THE COURT:** I know that.

11 **MR. MARTINEZ:** To 2014.

12 **THE COURT:** But somebody told me you all had an
13 agreement.

14 **MR. MARTINEZ:** Well, we did, because we told them
15 repeatedly, in all responses to all discovery requests starting
16 from the beginning of 2015, that we were only producing
17 documents through 2014.

18 There were dozens -- in fact, I'm sure more than a hundred
19 meet-and-confers on these document requests. At which time,
20 the plaintiffs never raised the issue or an objection to that
21 cutoff of 2014.

22 And of course, it makes sense in a case like this, as
23 Your Honor knows from private practice. The complaints are
24 filed in 2014. A grand jury investigation is begun. We have a
25 preservation cutoff in 2014.

1 Of course, defendants are not going to be -- continually
2 to produce documents, for example, regarding pricing for the
3 next five years, until the end of the case. There has to be a
4 cutoff date. And that was the cutoff.

5 **THE COURT:** Let me jump in.

6 **MR. MARTINEZ:** Sure.

7 **THE COURT:** I think -- I understand you think there
8 are, you know, a number of smoky fires. But somebody told
9 me -- I don't remember who it was -- there was a deal. And
10 that wasn't true. You all don't have a deal.

11 And just saying in your responses: But we're not going to
12 do X, not a deal. It's just you saying: We're not going to do
13 X. Doesn't mean you agreed. And then you all produced
14 hundreds of thousands of documents after that date.

15 So I'm feeling that I was slightly misled, and I don't
16 like it. And now I asked you all to show me -- it's the reason
17 you're here now. I said: You show me the deal.

18 And you didn't. You said: Well, we said X. But "we" is
19 unilateral. It's not a deal. It's the definition of not a
20 deal.

21 **MR. MARTINEZ:** Couple of things, Your Honor. One --

22 **THE COURT:** What's the deal?

23 **MR. MARTINEZ:** At the January 11th hearing, I
24 clarified the position of the defendants on this. We also did
25 point out that in one of our very first meet-and-confers, that

1 DPPs' counsel did agree that 2014 would be the cutoff. Of
2 course, that's not in a court order, but it was, from the
3 defendants' standpoint -- everyone was on this call -- that
4 that was the basis for what led to our consistent agreement for
5 the next three years.

6 And I think it's also, to be --

7 **THE COURT:** I'm sorry to jump in again. You say
8 "consistent agreement," but you all produced things in volume,
9 following 2014.

10 **MR. MARTINEZ:** If I can address that, Your Honor.

11 **THE COURT:** Yes, please.

12 **MR. MARTINEZ:** I would like to. I think it's a really
13 particularly disingenuous chart, for two basic reasons.

14 First of all, it contains -- on that chart of those 300
15 and some thousand documents, about half of them are in 2014.
16 And what the plaintiffs don't point out in there is that a
17 number of defendants explicitly agreed with the plaintiffs, and
18 stated in their responses to their discovery requests that they
19 were produced through December 31, 2014.

20 So that explains --

21 **THE COURT:** The chart actually does say that. It says
22 documents -- this is, by the way, 2041-1 on the docket.

23 Chart says: Documents produced between September 1 and
24 December 31st, 2014.

25 **MR. MARTINEZ:** That's correct, Your Honor. Right.

1 **THE COURT:** And you all said the cutoff was August.
2 So that chart seems just fine to me.

3 What's wrong with that?

4 **MR. MARTINEZ:** Well, no. Because some defendants'
5 cutoff was December 31, 2014; some was August 31st, 2014.
6 Depending on when they were first filed in their lawsuit.

7 The first lawsuit named --

8 **THE COURT:** I don't find that to be misleading.
9 Now, 2015 --

10 **MR. MARTINEZ:** Sure.

11 **THE COURT:** -- was the high point. And what's the
12 explanation for that?

13 **MR. MARTINEZ:** Sure. So the NEC Tokin defendant, who
14 is not a part of this motion and settled out with the
15 plaintiffs a couple years ago, they constitute the biggest
16 other chunk of that.

17 The rest of them would be examples of PDF documents that
18 are, of course, going to take some -- you know, the metadata
19 from when they're actually copied and then produced by the
20 parties.

21 There are also going to be some examples of defendants
22 who, just by use of their vendor, just accidentally didn't have
23 the date cutoff right, and produce additional documents beyond
24 that date. So that's --

25 **THE COURT:** That would be a terrible vendor that

1 cannot -- that misinterprets 2014 for 2015.

2 **MR. MARTINEZ:** It does happen. A number --

3 **THE COURT:** Then they should be fired. You should get
4 your money back.

5 **MR. MARTINEZ:** Those defendants probably should.

6 **THE COURT:** What do you do when the vendor doesn't
7 recognize your name as a lawyer, and produces all your memos?

8 **MR. MARTINEZ:** Well, that would not be good,
9 Your Honor, for sure.

10 **THE COURT:** That wouldn't be good.

11 **MR. MARTINEZ:** But that did happen in this case of one
12 of the defendants, and that constitutes the bulk of their
13 productions.

14 And then, the defendants did, on a special unique
15 scenario, agree to produce transaction data to the plaintiffs
16 beyond 2014, for an additional year of 2015.

17 And so that's -- a number of those documents are comprised
18 of the transaction data that was produced by the defendants in
19 response to that special request beyond the previous 2014 time
20 frame.

21 And then, there are going to be one-offs where particular
22 defendants agreed in a certain scenario to produce a certain
23 document.

24 So that explains why there's 325,000 listed on here
25 (Indicating). But of course, there have been tens of millions

1 of documents produced. It's a very tiny subset.

2 And as I just explained, very few of them are actually
3 intended to be an electronic-produced intentional document
4 outside of the transactional data, outside of PDFs that are
5 tagged with the date at which they are copied and then
6 produced, and outside of the small scenario of discrepancies
7 where the vendor messed up on the date range.

8 **THE COURT:** Mr. Lambrinos?

9 **MR. LAMBRINOS:** Your Honor, one thing I'll say is if
10 you look -- there's a couple of things.

11 When -- our joint submission on temporal scope, if you
12 look at Tab 6, is a lengthy email exchange between me and the
13 K&L Gates attorneys.

14 And on Page 11, I make all of the same arguments you made
15 a few minutes ago to Mr. Martinez.

16 **THE COURT:** I'm not making arguments.

17 **MR. LAMBRINOS:** Well, the position --

18 **THE COURT:** You understand that. Mr. Lambrinos, I'm
19 -- the Court is not making arguments.

20 **MR. LAMBRINOS:** Sorry. I mischar- -- misunderstood.

21 But we told them there was no agreement. And they kept
22 saying there was an agreement. And we said: Your assertion in
23 this letter that you object is not an agreement. The citation
24 to the preservation order is not an agreement.

25 They cited a meet-and-confer in May, May 1 of 2015. I

1 have cc'ed the people that were supposedly on that meet and
2 confer. I said: There was no evidence of an agreement. And
3 if you have one, please respond to this email --

4 **THE COURT:** Let me, let me just jump in. What do you
5 want the end date to be, if we go past 2014?

6 **MR. LAMBRINOS:** Today.

7 **THE COURT:** When?

8 **MR. LAMBRINOS:** Today.

9 **THE COURT:** Oh, today.

10 **MR. LAMBRINOS:** The present for the apology -- excuse
11 me -- we're talking about the discrete categories of documents,
12 Your Honor.

13 **THE COURT:** What do you want the end date to be if
14 we're going past 2014?

15 **MR. ZAPALA:** I was going to say -- Adam Zapala for the
16 indirect purchaser plaintiffs.

17 Here, we're talking about a very narrowly-tailored
18 document. So we're just talking about apology letters; we want
19 them up to the present. It's not burdensome for them to go get
20 them. They have them. They have them in a central location.
21 They don't have to do word searches; they don't have to search
22 through billions of electronic documents --

23 **THE COURT:** What's the central location?

24 **MR. ZAPALA:** We presume they keep them in their
25 personnel files. I mean, these things aren't just floating out

1 in the email ether.

2 They have -- they made their employees do apology letters
3 for a reason, because they wanted to retain them and hold them.
4 So, so our view is --

5 **THE COURT:** I thought the apologies were spontaneous.
6 Is that not right?

7 **MR. LAMBRINOS:** Excuse me?

8 **THE COURT:** I thought the apologies were spontaneous.
9 They were ordered to, by the company?

10 **MR. ZAPALA:** Correct.

11 **MR. LAMBRINOS:** Yes, Your Honor. I don't want to
12 testify --

13 **THE COURT:** What's the point of that? Why would the
14 company do that?

15 **MR. LAMBRINOS:** What we see, Your Honor, is people,
16 they are ordered to make apologies, and they will write them
17 out. And sometimes it is in their own words, and sometimes
18 they hand-write them.

19 I don't want to say what the motivation of the defendant
20 is.

21 **THE COURT:** Mr. Papendick?

22 **MR. PAPENDICK:** Certainly, Your Honor. I could shed a
23 little light on it.

24 **THE COURT:** Yes.

25 **MR. PAPENDICK:** Ian Papendick.

1 These apology letters, we responded that none of them
2 exist in this case for my clients, for Panasonic and Sanyo.

3 But these things -- from what I understand, they're the
4 type of subsequent remedial measures to discipline employees
5 who have violated company policy in the past. That's what they
6 are. They're HR disciplinary measures.

7 **THE COURT:** Okay. All right. Well, let's produce the
8 apology letters through May 1st, 2018.

9 Okay?

10 **MR. LAMBRINOS:** Thank Your Honor.

11 **THE COURT:** And No. 2, the second set goes to RFP 33.
12 That will be subject to the prior ruling.

13 **MR. LAMBRINOS:** Yes.

14 **THE COURT:** What are the personnel records in No. 79?

15 **MR. LAMBRINOS:** No. 79, we're asking for personnel
16 records as part of that carve-out because there's a number of
17 former employees that we want to determine whether they have
18 ongoing benefits with the company, or an ongoing consulting
19 relationship. And the only way to know that is through a
20 real-time personnel record. And -- because there's a lot of
21 former employees that we think maybe they're working for an
22 affiliate, or maybe they have a consulting relationship or
23 ongoing benefit. And we saw a lot of that in *Batteries* case,
24 for example. And we are looking for the personnel records, for
25 that reason, through the present.

1 **THE COURT:** What is that relevant to?

2 **MR. LAMBRINOS:** That's relevant to determining the
3 corporate control over these individuals. Because if they
4 still have control but they're claiming someone as a former,
5 but they're actually a consultant and receive ongoing benefits,
6 then they could have produced them for deposition and didn't.

7 **THE COURT:** Okay.

8 Mr. Martinez?

9 **MR. MARTINEZ:** Yes. If I may, Your Honor, I want to
10 just add that this request is before you today solely as an
11 eleventh-hour addition by the plaintiffs.

12 Before we made our joint submission, it was never
13 discussed; we have never had a meet-and-confer on this request,
14 even though it is extraordinarily overbroad. It asks on its
15 face -- and that's what they are going to ask you for here
16 today, unless they narrow it -- it asks for every document in
17 any employee's personnel file.

18 We have made objections to those, substantive, including
19 that production of many of those materials would violate
20 Japanese privacy law.

21 The plaintiffs have never requested a meet-and-confer. We
22 have never discussed this --

23 **THE COURT:** Docket No. 2041 says: The parties have
24 met and conferred.

25 **MR. MARTINEZ:** We have not, Your Honor.

1 **THE COURT:** Is that right, Mr. Lambrinos?

2 **MR. LAMBRINOS:** No, we have met and conferred on
3 personnel records. That's -- we have met and conferred. And
4 we met and conferred on this letter (Indicating). We exchanged
5 drafts of this letter, back and forth.

6 The point of the -- additional point of the personnel
7 records is reprimands. Not just apologies, but reprimands of
8 employees, which we've repeatedly asked for. And we've asked
9 specific questions about specific employees, and whether they
10 were actually former.

11 **THE COURT:** All right, just a moment.

12 So, Mr. Martinez, the letter says you met and conferred.
13 And Mr. Lambrinos said you met and conferred.

14 **MR. MARTINEZ:** We did not, Your Honor. They submitted
15 this list to us -- and actually, it was a different list -- two
16 days before we made this submission, different than what they
17 actually ended up putting in their submission that we got the
18 day before it was filed. We then --

19 **THE COURT:** Well, Document 2041 does refer to RFP 79,
20 personnel records, and RFP 80.

21 **MR. MARTINEZ:** Correct. We never met and conferred on
22 those requests before.

23 They make a proposal right before we put our joint
24 submission, saying that: Yes, we concede on the 2014 date.
25 The only categories that we would say should be an exception to

1 those are the following. All right?

2 We rejected that proposal. So if they're calling that a
3 meet-and-confer, I guess they are. But we never had a
4 substantive discussion about what documents they're actually
5 seeking in that request.

6 And the reason we rejected it, Your Honor, is because
7 Your Honor was very clear at that January 11th hearing on the
8 -- that all the other requests, except for the apology letters,
9 have been denied. So that's why we didn't feel like we needed
10 to engage in a subsequent conversation about it.

11 **MR. LAMBRINOS:** After this letter (Indicating) was
12 filed, I went to Mr. Martinez and asked if he wanted to discuss
13 the carve-out categories. And he said no.

14 **THE COURT:** All right.

15 **MR. MARTINEZ:** He didn't actually have that
16 conversation with me.

17 **THE COURT:** Okay, let's just move past that. Here's
18 what we're going to do. So you can -- not all personnel
19 records; that's too much. All right?

20 But you can propound an interrogatory to the defendants,
21 saying: Identify any former employee with whom you have a --
22 with whom you had or currently have -- had as of August, 2014,
23 or currently have today, consulting agreement, retainer
24 agreement, or any other financial tie.

25 I mean, I -- you haven't asked that before? If you

1 haven't asked that, you can ask again.

2 **MR. LAMBRINOS:** We have asked similar things.

3 **MR. MARTINEZ:** They have not.

4 **MR. LAMBRINOS:** Similar things, yes.

5 **THE COURT:** That's what you can ask. So that takes
6 care of No. 2.

7 No. 3 --

8 **MR. MARTINEZ:** If I could clarify just one piece,
9 Your Honor?

10 **THE COURT:** Yes.

11 **MR. MARTINEZ:** This was only supposed to be about
12 former employees that they supposedly requested for deposition
13 before.

14 And is that the extent of your order, to just -- to match
15 up with what they requested?

16 **THE COURT:** Yes.

17 **MR. MARTINEZ:** Thank you.

18 **MR. LAMBRINOS:** I'm sorry. The RFP, as written, is
19 the personnel records of everyone. But we will agree to the
20 narrowing to the formers.

21 **THE COURT:** No, no. Your rationale was you think
22 there are people you asked for deposition that weren't
23 produced. So it's going to be limited to that.

24 **MR. LAMBRINOS:** Right. I'm agreeing.

25 **THE COURT:** So, if you want to make things easy, you

1 can just give them the list of people you asked for, and then
2 they can respond.

3 **MR. LAMBRINOS:** I think it would be good if we worked
4 together on that. We'll provide as many names as we can, but
5 they --

6 **THE COURT:** It would be good to work together,
7 although you all don't seem to be doing that. If you can do
8 that, that's fine.

9 All right, No. 80. Audio and video recordings of
10 competitor -- what is that about?

11 **MR. LAMBRINOS:** There was a -- so we propounded
12 this -- 79 and 80 were part of the same RFP.

13 So there is a document that says -- it says: Why did you
14 communicate with such-and-such competitor? Now I'm worried
15 that competitor has recordings of our conversations.

16 So we're just saying: If you have recordings of
17 competitor conversations amongst the cartel members, they
18 should produce them through the present. That's all we're
19 saying there.

20 **THE COURT:** But audio -- recordings of what?

21 **MR. LAMBRINOS:** The meetings. Cartel meetings.

22 **THE COURT:** Post-filing of the complaint.

23 **MR. LAMBRINOS:** From the relevant time period which
24 starts in 2000 to the present, correct, is what we're looking
25 for.

1 **THE COURT:** Mr. Martinez?

2 **MR. MARTINEZ:** Your Honor, we've already informed them
3 that the defendants are not aware of the existence of any such
4 recordings. Just like we're not aware of the existence of any
5 such apology letters, either.

6 I'm not sure what else we can say on that, other than
7 there's no need -- and I think Your Honor can imagine this --
8 when -- given that the complaints are filed in 2014, the DOJ
9 investigation was begun in that same time period, as to why
10 there would be audio-video tapings of any type of meetings is
11 beyond us.

12 But they have a supposition that something may somewhere
13 exist. And that's what we're arguing about. We don't think we
14 should --

15 **MR. LAMBRINOS:** (Inaudible)

16 (Multiple speakers)

17 **THE COURT:** The defendants have represented they do
18 not have any responsive documents.

19 **MR. LAMBRINOS:** They've done a diligent search?

20 **THE COURT:** Well, they're going to be held to that.
21 So if you disprove it, somebody will be called to account.
22 Okay?

23 **MR. LAMBRINOS:** Thank you.

24 **THE COURT:** All right. No. 3, ability to pay. Yes,
25 that's perfectly fine. That goes to your status as victims, as

1 well. So that information is ordered.

2 Now, let's not get out of the control with that. All
3 right? This is not an opportunity to produce each and every
4 financial document. You need to be very focused in what it is
5 that you want. Okay? It's late in the day, so you have got to
6 keep that in mind.

7 Now, you two can come back to me if you have disputes
8 about it, but it should be relatively straightforward. All
9 right?

10 **MR. LAMBRINOS:** Okay.

11 **THE COURT:** Okay. Keep that narrow.

12 All right. No. 4, evidence relating to -- what is the
13 motivation for this request about alteration of documents?

14 **MR. LAMBRINOS:** There is this testimony from a
15 representative -- an employee of Taitso, who states that he
16 altered documents that were provided to the Chinese regulatory
17 authority. So there would have been altered versions and
18 regular versions, and some kind of explanation.

19 And if that was the case, then we would like that evidence
20 of the alteration, and the attempts to correct it.

21 **THE COURT:** But you only have one person who did that,
22 right?

23 **MR. LAMBRINOS:** Yes. We know that there was at least
24 the one defendant. And if there were others, then we think
25 that it should also be produced. We imagine that is a

1 discrete, limited, small universe of documents.

2 **THE COURT:** Mr. Martinez?

3 **MR. MARTINEZ:** I can't speak for the one defendant
4 that he's referring to. I don't think there's any other
5 defendant this applies to, whatsoever.

6 I also think, though, Your Honor denied this request just
7 in the previous argument on Item No. 1. So as far as the --
8 providing some clarity on that, I --

9 **THE COURT:** This has nothing to do with Item No. 1.
10 This is No. 4. Evidence relating to employee alteration of
11 documents provided to foreign regulators. There's no prior
12 ruling on that.

13 So what is --

14 **MR. MARTINEZ:** I thought Mr. Lambrino (sic) brought
15 that up in the first --

16 **THE COURT:** He may have mentioned it, but that's not
17 what we're doing.

18 **MR. MARTINEZ:** In any event --

19 **THE COURT:** Okay. That will be ordered. So you can
20 produce that, too, if there's anything out there.

21 And then finally -- oh, No. 5. Non-privileged internal
22 investigation and disciplinary reports.

23 What does "disciplinary reports" mean?

24 **MR. LAMBRINOS:** These are the notice of reprimand,
25 when individuals are reprimanded for their cartel behavior and

1 their competitor contacts. And then there's an incident
2 report. These are all HR documents, typically.

3 This is -- they're just being reprimanded for having
4 broken company policy by behaving in cartel behavior, at
5 sometimes the orders of others. And reprimanded.

6 **THE COURT:** Non-privileged.

7 **MR. LAMBRINOS:** Non-privileged, yes, sir.

8 **THE COURT:** Okay.

9 Mr. Martinez?

10 **MR. MARTINEZ:** We've already, at least for my client,
11 explained to plaintiffs that there are no such documents that
12 exist. I think other defendants have made similar
13 representations.

14 So I'm not sure exactly what they're looking for that
15 would be different from the reprimands that they talked about
16 in Category 1 that you just addressed.

17 **THE COURT:** Well, that's different. Those are actual
18 documents that somebody has written. This is somebody at the
19 company preparing a report about an employee, saying: I think
20 employee X did this. I'm writing him up or writing her up.

21 All right, that's fine if you don't have them. But --
22 now, when I say "that's fine," that means I need an affirmative
23 representation from each defendant that: We do not have this
24 document. Okay?

25 So if you don't have it, you need to say that. If you

1 don't say that, then I'm going to assume that you have it. And
2 if you don't produce it, there will be consequences. So that's
3 what we're going to do.

4 **MR. MARTINEZ:** Sure. And just to clarify, Your Honor,
5 that's also true on the apologies issues. We didn't get to it,
6 but all of the defendants that I have talked to in preparation
7 for today have told me that they have no such documents.

8 So there shouldn't be any expectation that there's going
9 to be production soon.

10 **THE COURT:** That is fine. But it's going to be in the
11 record, in a document that I will look at, and use to hold
12 people to account if it turns out not to be right.

13 And we're not going to be squirrely or slippery about
14 this. We're going to have it on a clear paper trail: On this
15 date, I told the plaintiffs we absolutely do not have this.

16 And that's going to be the form of the answer. And if it
17 turns out that that's wrong, then we will have a different
18 conversation.

19 But it is going to be, first, literally set in stone. And
20 you're going to live to that. So make sure everybody does
21 that. That will be the order that I will issue later today.
22 But there will be no: Well, I told somebody who told me, the
23 judge, that we don't have it. It's going to be each individual
24 defendant making that express representation under Rule 11 and
25 the other rules of conduct.

1 All right. Let's move to No. 4. 30(b)(6) witness from
2 Panasonic.

3 **MR. LAMBRINOS:** Okay. That's a different attorney,
4 Your Honor. Mr. Dallal from my office.

5 **THE COURT:** Yes. All right. I don't need argument on
6 this. I read the deposition. It's within acceptable
7 parameters. I wouldn't say it was the worst thing I've ever
8 seen. I wouldn't say the witness was singing like a canary,
9 either, but it was certainly within the boundaries. So I'm not
10 going to order that.

11 I'm going to note two things, though. First, I was
12 surprised by the number of objections during the course of the
13 questioning. That concerned me.

14 And I believe it was you, Mr. Papendick.

15 **MR. PAPENDICK:** It was, Your Honor.

16 **THE COURT:** That was too many. Every page -- every
17 question, it seemed you had objection to. Now, that is just
18 getting to the point where it's going to become too much. So
19 just take that as a cautionary note, all right?

20 **MR. PAPENDICK:** Absolutely, Your Honor.

21 **THE COURT:** Nobody complained, but I was struck by
22 that.

23 The second thing is to the extent that developments in the
24 case provide evidence that contradicts what 30(b)(6) witnesses
25 are saying, you will have the opportunity to come to me; seek

1 appropriate evidentiary or other sanctions.

2 So for example, if a witness says: We never had any
3 agreements with competitors, and then they enter into a guilty
4 plea which admits that they did, you can come visit with me,
5 and I will make sure that justice is done. Okay?

6 Other than that, that will be -- no further deposition
7 will be ordered for No. 4.

8 No. 5, Sanyo -- I don't quite understand why Sanyo said:
9 We're not going to produce anybody.

10 **MR. PAPENDICK:** We -- we never said that, Your Honor.
11 And -- and --

12 **THE COURT:** Oh, you didn't.

13 **MR. PAPENDICK:** No. And plaintiffs put in there --

14 **THE COURT:** Somebody told me you did. Plaintiffs did.
15 Plaintiffs said that you canceled the Sanyo depositions.

16 **MR. PAPENDICK:** Yes. The plaintiffs filed their
17 motion to compel the Panasonic 30(b)(6). And we told
18 plaintiffs that we were intending to educate the Sanyo 30(b)(6)
19 deponent in the same manner that we educated the Panasonic
20 30(b)(6) deponent. Which we thought was appropriate under the
21 rules.

22 And we asked them to postpone the deposition until the
23 dispute that Your Honor just resolved was complete.

24 **THE COURT:** Hm.

25 **MR. PAPENDICK:** They refused, so we filed a motion for

1 a protective order.

2 **THE COURT:** Oh, okay.

3 **MR. PAPENDICK:** And to be clear, we had a date. We
4 have been -- for the entire process, we have been working with
5 them through the end of 2017, to schedule a date for the
6 witness.

7 And we are absolutely willing to proceed now with the
8 30(b)(6), now that --

9 **THE COURT:** All right, that's resolved. You can go
10 forward on Sanyo.

11 Let's see. No. 6. Clawback documents.

12 **MR. WILLIAMS:** Good afternoon, Your Honor. Again,
13 Your Honor, Steve Williams for the direct purchasers.

14 **THE COURT:** Hm. Okay. I have some concerns.

15 First, I don't think -- despite my initial thinking, I
16 don't think this is going to be possible on an exemplar basis.
17 I think all the documents are going to have to be reviewed.

18 And here is how we're going to do that. So I'm going to
19 combine this No. 6 with No. 7. And that involves the
20 additional 485 documents that apparently were clawed back by
21 Panasonic and Sanyo.

22 I read the three exemplars that I asked for and got. And
23 I just -- I have doubts that are they are privileged, but I
24 can't really tell, because I don't know who these people are,
25 and I don't know the context of these documents. I can see

1 arguments on both sides.

2 So you two are going to sit down with the 485 documents
3 and the 99 previous ones -- right? Was it 99 and 485?

4 **MR. PAPENDICK:** That's correct, Your Honor.

5 **MR. WILLIAMS:** Yeah.

6 **THE COURT:** When I say "you two," I do mean
7 Mr. Williams and Mr. Papendick, in person. And you're going to
8 go through each and every one of them, and see what you can
9 work out.

10 For what you cannot work out, I will review them in
11 camera. Now, that is an extraordinary consumption of federal
12 judicial resources. I will do it.

13 But if I review these documents, and it takes up that time
14 that I take away from my other cases, and it's going to be
15 hours and hours and hours of work, and if I find that they are
16 consistently not privileged, there will be substantial
17 sanctions. I want to be very clear about that. There will be
18 substantial sanctions. That will be an abuse of process, in my
19 view.

20 So you two go through this.

21 And the flip side of that is true. If the documents are
22 patently privileged and I'm being asked to go through them, and
23 see one patently privileged document after another, there will
24 be sanctions on the plaintiffs' side. All right?

25 So you have a great degree of motivation, on top of your

1 already high level of professionalism, to make sure this gets
2 postured to me in the right way. But there are going to be
3 consequences. Financial, possibly attorney sanctions.

4 So keep that in mind. All right? Because you are asking
5 me to do an enormous amount of work, which I will do, but only
6 when you represent to me in good faith that you have an
7 argument saying this is or is not privileged. Okay?

8 Now, you can get those to me in two weeks, maybe? How
9 long -- how long do you need? Three weeks?

10 **MR. PAPENDICK:** Your Honor, these documents, they're
11 predominantly in Japanese. And we don't have Japanese-speaking
12 attorneys available.

13 **THE COURT:** Well, who made the decision they were
14 privileged?

15 **MR. PAPENDICK:** We used a review team that does have
16 Japanese-language attorneys.

17 **THE COURT:** So you were not on the team? You were not
18 making the decision.

19 **MR. PAPENDICK:** We have a review team of
20 Japanese-language attorneys that -- that ask us for -- to guide
21 them on the decisions. And they inform us of the content and
22 substance of the documents, the people who are on them, what
23 the documents say. It is a team of Japanese attorneys who work
24 with our case team to make these determinations.

25 May I ask --

1 **THE COURT:** No. You need to answer my questions
2 first.

3 Who are these lawyers?

4 **MR. PAPENDICK:** Yes. So, for the original 99 that are
5 being challenged, from our initial productions back in 2015, we
6 used a vendor in Japan to -- who had Japanese attorneys -- to
7 do the privilege review, due to the time limitations that were
8 present at that time. We had to produce -- we produced over --
9 almost -- over 3 million documents in the span of just four to
10 five months.

11 For the clawback review, it was conducted in-house by
12 Japanese attorneys at our firm.

13 **THE COURT:** All right. So the initial team left them
14 out. Now you want them back.

15 And who's the team that made the decision that these were
16 inadvertently produced? The second group of people?

17 **MR. PAPENDICK:** Yes, Your Honor.

18 **THE COURT:** What was your role in that? Did you have
19 any role in that?

20 **MR. PAPENDICK:** I supervised the review, with my
21 colleagues.

22 **THE COURT:** Did you look at each and every document?

23 **MR. PAPENDICK:** We looked at the summaries that the
24 review team provided of each and every document. We did not
25 have the resources or the time to have them all translated, so

1 we had to trust what our Japanese review team was telling us
2 about the documents.

3 **THE COURT:** How do you want to handle this?
4 Mr. Williams?

5 **MR. WILLIAMS:** Well, I think we'd certainly need a
6 little more time, but I have a suggestion, if I may, that I
7 think could eliminate the need for the parties and the Court to
8 do that work.

9 **THE COURT:** Oh. All right. What is that?

10 **MR. WILLIAMS:** I think that the facts show that there
11 has been a waiver. And this is, in particular, as to the
12 second motion. And for this reason.

13 We wrote Panasonic on December 12th to tell them: These
14 are the documents we want you to use to prepare this witness.

15 And from that time, from December 12th until when the
16 deposition was going to be in February, we were going through
17 these documents, using them for our preparation. They don't
18 tell us until February 1st that they're clawing them back.

19 And at that point, that's too late. We can't undo what we
20 learned. We've been using them. They know on December 13th,
21 at the latest, that some of these things are privileged.

22 And their argument in response is --

23 **THE COURT:** Now, how many -- is this the first 99? Or
24 is this --

25 **MR. WILLIAMS:** No. This is not the first 99, sir. So

1 this is the -- it's ECF 102 in the MDL docket. It's the second
2 of the motions that we have on.

3 **THE COURT:** All right. The 485.

4 **MR. WILLIAMS:** Yeah. Your Honor's correct.

5 **THE COURT:** So how many of those were you using for
6 this deposition, roughly? Just roughly.

7 **MR. WILLIAMS:** I apologize, I did not hear the
8 beginning of that.

9 **THE COURT:** How many were you using for the
10 deposition?

11 **MR. WILLIAMS:** I think we had not sent them 485,
12 obviously, but the documents tend to be very similar. They are
13 of a type of, if I understand it, in very broad terms, and not
14 to impinge on anything that's privileged, but this was talked
15 about at a hearing before. These are essentially spreadsheets
16 where people who were involved in the cartel activity set forth
17 the facts: Who did I meet with, when did I meet with them,
18 what did we talk about.

19 **THE COURT:** I think I have those, or a sample of one.
20 Okay.

21 **MR. WILLIAMS:** So as to the 99, Your Honor's correct.
22 It doesn't cure that issue as to those. But certainly as to
23 the second set -- and I note that the argument Panasonic makes
24 in response is: We didn't want to piecemeal tell you.

25 I don't think you can do that when you think privilege is

1 at issue. I don't think you can think your adversary has your
2 privileged documents, and sit on them for six weeks, and then
3 tell them.

4 And I know Judge Ryu, in a decision not long ago,
5 commented that a party who's aware that the other side has
6 something that is privileged and got it by accident has to act
7 with virtual immediacy. That's always been the standard I have
8 understood. You can't wait to then send a comprehensive list
9 of 500 documents. If you know I have one privileged document,
10 and I'm using it to prepare for the deposition, you can't take
11 it back later.

12 And these 485 are of the very same nature, and likely have
13 a lot of the same content as the 99. If that's, in fact, true,
14 then there might not be a reason to go back and do the 99 if,
15 in fact, the Court were to agree that there's been a waiver as
16 to the 485.

17 **THE COURT:** Hm.

18 Yes.

19 **MR. PAPENDICK:** First, I would ask -- if the Court is
20 inclined to consider this argument right now, I would ask to
21 have the opportunity to brief the waiver issue as the motion
22 that counsel's referring to was only filed on Monday. But to
23 correct some of the factual pieces of what he said, first,
24 Your Honor's correct, there were not 485 documents provided to
25 a list of us. There was only a handful of documents. Less

1 than 40 exemplar documents.

2 And in our preparation, we separated the ones that were
3 relevant to the Panasonic deposition that went ahead, and we
4 clawed back immediately the ones for the Panasonic deposition
5 -- that related to Panasonic information.

6 The ones for the Sanyo deposition, we clawed those back
7 after. That Sanyo deposition has not occurred yet. There
8 were -- they sent two separate lists but the list were
9 commingled. As for the 485, some of them are similar to some
10 extent but in no way are they -- is there identical information
11 on all of them, and in no way do all 485, are they all related
12 to the same investigation and the same time period.

13 For example, Your Honor, the -- I believe, if I'm
14 remembering correctly, some of the documents that you reviewed
15 in camera, from the 2011 time period. The 485, the bulk of
16 them is from the 2014 time period, which is not -- which is not
17 part of the exemplar documents.

18 **THE COURT:** Mr. Williams, let me ask you --

19 **MR. PAPENDICK:** And I would have another --

20 **THE COURT:** -- how would the waiver, would that have
21 applied to all 485 documents? I mean, this waiver idea. What
22 are you claiming would be waived?

23 **MR. WILLIAMS:** I guess a couple of points I'd like to
24 make, and I'll answer your question very soon. But I just want
25 to say first, to the extent there's an argument about let's

1 brief this, this was briefed. This is in their Document 163.
2 They briefed this exact argument. This is not the new motion.
3 This is the argument we're briefing now.

4 So I think that the answer to the question is: My
5 understanding is that the waiver that comes with inadvertent
6 production of a privileged document extends to that document
7 and other documents of the same type with the same information.
8 It's not a subject-matter waiver, meaning we couldn't say
9 they've waived all privilege as to anything related to the
10 topics (Indicating).

11 **THE COURT:** Well, but that's what I would like to hear
12 about, is what --

13 **MR. WILLIAMS:** And that's my thought, is that the
14 reason --

15 **THE COURT:** You need to follow train of --

16 **MR. WILLIAMS:** Yeah.

17 **THE COURT:** Who would be -- how long -- how long does
18 the shadow fall for a --

19 **MR. WILLIAMS:** So here's what I think. I think that
20 the reason that they found the 485 was because they were all of
21 a similar nature to the ones we did identify.

22 **THE COURT:** Hm.

23 **MR. WILLIAMS:** So I think that it would be incumbent
24 on Panasonic to go through, and if, in fact, there's waiver
25 because they waited six weeks to tell us that the documents we

1 identified for them were privileged, then it should be their
2 obligation as the party asserting the privilege to only then
3 assert privilege as to documents that do not have the same
4 information in them as the ones that we either identified in
5 our letter to them which began this process, or used at the
6 deposition, because those documents were again of the very same
7 nature, and it wasn't until we used them at the deposition that
8 they then said: Wait, you can't use these, and by the way,
9 four days later, here's another one. But they're all the same
10 types of documents.

11 So we've seen them, we've studied them, we've prepared to
12 examine witnesses on them for six weeks. At that point, it's
13 too late to bring them all back.

14 So the answer again to the question would be: Any
15 documents that have the same type of information, those should
16 be waived, and they should only be assertions of privilege --

17 **THE COURT:** You can tell me that, right? You can say:
18 Here are the 200 documents that look like this one.

19 **MR. WILLIAMS:** I think we can. I think, to me, the
20 issue is delicate in that we've sequestered them due to the
21 clawback request.

22 So if we're to work with Panasonic, we can certainly work
23 on that. But it would seem to me, as an initial matter, they
24 ought to be reviewing them. They ought to winnow it down to
25 the ones that don't have this same type of information. And

1 it's only those documents for which they should be asserting
2 privilege.

3 **THE COURT:** All right.

4 **MR. PAPENDICK:** May I respond, Your Honor?

5 **THE COURT:** Yes.

6 **MR. PAPENDICK:** I think that under the law, if the
7 Court were to be inclined to find a waiver, it would be
8 document-specific, and not as expansive as Mr. Williams is
9 requesting.

10 When he says documents that have similar information --
11 sorry -- similar documents, there could be documents on a form,
12 a blank form, where people were filling out the form -- the
13 form looks the same, but completely different people,
14 completely different information.

15 I don't think that there should be a waiver for that type
16 of document. Even if they look similar, it -- there were
17 investigation documents, there were forms filled out. Yes.
18 But different information, different people. I don't think
19 that the relief -- relief as expansive as he's requesting is
20 warranted.

21 And I would have another suggestion --

22 **THE COURT:** So somebody on the reviewing team -- I
23 know this is an imperfect art and I know mistakes get made.
24 That's why I think you all have a clawback agreement. I mean,
25 people understand that. And that benefits everybody, and

1 there's no reason to get too worked up about it. But
2 typically, that's five documents or, you know, two documents,
3 or maybe a half dozen documents, or maybe in a big case 24
4 documents.

5 But, you know, you are asking to get back now hundreds of
6 documents. Over -- almost 600 documents. And that -- you
7 know, that's -- that doesn't sound right to me.

8 **MR. PAPENDICK:** May --

9 **THE COURT:** Yes.

10 **MR. PAPENDICK:** May I, Your Honor?

11 **THE COURT:** Yes.

12 **MR. PAPENDICK:** First, the 99 documents, that first
13 set, those were withheld. We logged those, 2015. There are --
14 have been just over 500 clawed-back documents. And when you
15 look at it in the context of the total production and the time
16 constraints that we were operating under back in 2015, you're
17 correct, it's less than ideal. We certainly wish we hadn't
18 produced them.

19 But I think that it's an understandable and reasonable
20 error to have made, when we did have to review over 10 million
21 pages of documents for production in a four-and-a-half month
22 period.

23 And if I may, Your Honor, one other solution that I would
24 offer would be if we can get an agreement from the plaintiffs
25 that there would be no broader waiver for -- if we were to

1 agree to produce some of the documents, you know, even if we do
2 think we have legitimate claim of privilege but it might be
3 more on the fence, if we could have an agreement that that
4 wouldn't waive privilege to a broader set of documents, you
5 know, I think that we might be able to resolve this, or at
6 least narrow the dispute substantially.

7 **THE COURT:** All right.

8 **MR. PAPENDICK:** Going forward.

9 **THE COURT:** I appreciate that. And we will do that.

10 But -- and Mr. Williams, I hear what you're saying, but,
11 you know, waiver's a complicated thicket, and I would rather
12 have you two just work it out. Okay? So you take whatever
13 time you need, I won't put a time limit on it, and you do that
14 process. And then you tender to me anything that you cannot
15 agree on. And I don't need any briefing; just hand it to me.

16 And I will say, though, that if -- for any documents you
17 give me, I do want why -- I don't want any briefing, but why is
18 this privileged? Okay. Dr. X is an attorney. And this was
19 his -- requesting somebody in the course of the lawsuit to
20 provide the following information. Okay?

21 And if plaintiff is doubtful about that, you can tell me,
22 you know: Dr. X is not actually an attorney, he's an engineer.
23 Or whatever the response is. But, you all do that.

24 And anything that the defendant decides to produce will be
25 for that document, only. They will not be at risk of opening

1 the door, because I want you two to solve this. Okay?

2 Now, I am concerned, this is far too many documents. And
3 to me, it look to me like somebody's just having dyspeptic
4 second thoughts. Not that they were actually mistakes. And
5 that is not going to fly.

6 Yes, Mr. Williams?

7 **MR. PAPENDICK:** And we're -- you ordered the two of us
8 to do this, personally.

9 **THE COURT:** In person. At the location of your
10 choice.

11 **MR. PAPENDICK:** Thank you. And one thing I would ask
12 is --

13 **THE COURT:** Typically I would require it in my jury
14 room, so you're getting a very significant indulgence.

15 **MR. WILLIAMS:** Thank you. What I would ask is to the
16 extent there's translations of these -- I don't know if
17 Mr. Papendick is fluent in Japanese. I know I'm not.

18 **MR. PAPENDICK:** I'm not.

19 **THE COURT:** You both need to do it in a language you
20 can work in. And I don't want to hear: I'm just doing it
21 because Attorney X told me to. You are both taking personal
22 responsibility for it. All right?

23 So if it's in Japanese and you need an English
24 translation, you make sure you have it. Because that's what
25 I'm going to make my decision on. I'm not reading Japanese,

1 either. I'm going to read the English translation. All right?

2 So there won't be any buck passing in terms of: Well, the
3 Japanese guy said this. You two are responsible. Okay? All
4 right.

5 So, just whatever time frame you want for that. Okay?

6 **MR. WILLIAMS:** Thank Your Honor.

7 **THE COURT:** All right, that resolves 7. 6 and 7.

8 Now -- oh. Flextronics. 8. I'm sorry, 9. AVX' motion
9 to compel Flextronics document.

10 **MR. KIDWELL:** Yes, Your Honor, Robert Kidwell for AVX.

11 **THE COURT:** Yes.

12 **MR. TOMPKINS:** Charles Tompkins for Flextronics.

13 **MR. KIDWELL:** So starting off with 2089 and 2104,
14 Your Honor.

15 **THE COURT:** Yes.

16 **MR. KIDWELL:** So we issued a set of requests for
17 admissions to both Flextronics and DPPs, saying, you know:
18 Admit that you have no evidence that we did a number of things.
19 And I believe there are 20 of those. And with it, we submitted
20 a request for production of documents that said: For any
21 requests that you've denied or conditionally omitted, please
22 identify any evidence that you believe supports that claim.

23 In response to that, the DPPs called and asked for an
24 extra 30 days, and we gave it to them. And they gave us a
25 fulsome response.

1 Flex gave us their response within 30 days, which is the
2 response you've had before you. Since this motion was filed
3 and since Flextronics filed its response, they have given us a
4 supplemental production.

5 **THE COURT:** Oh. All right.

6 **MR. KIDWELL:** And I believe Mr. Tompkins filed a
7 letter about that. (Inaudible)

8 **THE COURT:** Does that take care of everything?

9 **MR. KIDWELL:** Well, that's the question I would like
10 to ask Your Honor.

11 So the information that was provided by Flextronics is
12 primarily a cut-and-paste of the DPPs' submission. And if what
13 they are telling me is, substantively: These are the documents
14 that we believe support our case and we're prepared to be bound
15 by them, then yes, it's great.

16 But if it's more along the lines of a: Well, here's lists
17 of a bunch of documents so that we can say we gave you a
18 response, we'll fight later about whether we actually think
19 these are the documents or not, then I think they need to
20 supplement.

21 **THE COURT:** Well, I have to say, I thought the
22 responses were a little bit thin. So I was going to order you
23 to redo them. But if you effectively have redone them, and
24 you're going to hang your hat on those responses, then that's
25 fine with me. And that will be the response.

1 **MR. KIDWELL:** And Your Honor --

2 **THE COURT:** There will be no alteration,
3 supplementations, or quibbling. That will be the response.

4 **MR. KIDWELL:** I think it's -- it's important to
5 separate the request for production of documents which is one
6 item from the requests for admission which were the first
7 item -- the request for production were keyed off the requests
8 for admission.

9 **THE COURT:** Let's just do the RFPs first.

10 **MR. KIDWELL:** Sure. There are five RFPs that, even
11 through supplementation, remain unanswered, other than with the
12 blanket objections.

13 **THE COURT:** Oh. Which ones are those?

14 **MR. KIDWELL:** That's RFPs No. 5, 6, 7, 21 and 22. And
15 some of those are near and dear to my heart, because No. 21
16 is: Admit you have no evidence that AVX entered into a
17 specific agreement to raise price or restrict output for
18 capacitors.

19 **THE COURT:** Let me just -- now, where are? That is
20 Tab number what?

21 **MR. KIDWELL:** That would be 2089, tab -- first one.

22 **THE COURT:** 2089-dash -- look. Let's just be clear
23 here. I'm doing Item No. 10 --

24 **MR. KIDWELL:** Uh-huh.

25 **THE COURT:** -- which is the -- whether the requests

1 for the production responses were satisfactory.

2 **MR. KIDWELL:** Correct. And it's -- the responses to
3 requests for production, and also responses to request for
4 admission.

5 **THE COURT:** We're just doing request for production
6 right now. And where are those? Just remind me where those
7 are. I can't find them.

8 **MR. KIDWELL:** So it should be 2089, Tab B.

9 **THE COURT:** Tab B. Okay. Ah, yes. Okay. All right.

10 **MR. KIDWELL:** Yes. Exhibit A is the request for
11 admission, and then Tab B is request for production.

12 **THE COURT:** Tab B has only three requests for
13 production. So which one are we talking about?

14 **MR. KIDWELL:** So the five RFPDs -- Tab B -- that are
15 unanswered are 5, 6, 7, 21 and 22.

16 **THE COURT:** Right, but my Tab B has only three
17 requests for production. Says "Relevant excerpts," and there
18 are only three there. The ones you are talking about are not
19 in this tab.

20 **MR. KIDWELL:** Hm. There is a tabbing issue, then.

21 **THE COURT:** So where are they? I don't remember
22 seeing them.

23 **MR. KIDWELL:** I can hand you my copy, if you like.

24 **THE COURT:** I need the docket number. Do you have the
25 docket-filed copy?

1 **MR. KIDWELL:** I have my list. I didn't bring the
2 tabbed file.

3 **MR. TOMPKINS:** Your Honor, before we spend, I think
4 AVX is referring -- these requests for production that were not
5 supplemented are requests that --

6 **THE COURT:** All right, we're moving beyond where I
7 want to be. I need to see the requests. I have your motion
8 here, and your letter, and I don't see the requests that you're
9 talking about. So --

10 **MR. KIDWELL:** Can I hand you them, right now,
11 Your Honor?

12 **THE COURT:** Well, I need to see them in the docket.
13 Do you have a docket copy that says -- it will say -- blue on
14 the top.

15 **MR. KIDWELL:** They were filed under seal, Your Honor.

16 **THE COURT:** Oh, they were filed under seal. Why were
17 they filed under seal?

18 **MR. KIDWELL:** Because I believe they had his responses
19 on them.

20 **THE COURT:** The responses are non-substantive. Right?
21 Okay. Everything I have from you is just for Request for
22 Production 1, 2 and 3, including the sealed copies. So --

23 **MR. KIDWELL:** We have a photocopying and tabbing
24 issue, it sounds like.

25 **THE COURT:** That's all you gave me. That's all I

1 have. I work off of the official court copy.

2 **MR. KIDWELL:** For purposes of our discussion here, may
3 I hand you a copy to look at while we talk about it?

4 **THE COURT:** Well, that -- this -- I don't -- just one
5 second.

6 Okay. I think the problem is we didn't get chambers
7 copies. I think I've found it. All right.

8 Now, let's start from the beginning. So this is actually
9 No. 10. And this (Indicating) is with respect to Docket
10 No. 122, and that is AVX's Motion to Compel Additional
11 Responses to Requests for Production and Requests for
12 Admission. We are just doing the request for production right
13 now. And I've found it.

14 So, now, which ones were they? 10? Which numbers were
15 they?

16 **MR. KIDWELL:** So Request for Production numbered 5, 6,
17 7, 21 and 22.

18 **THE COURT:** Okay.

19 **MR. TOMPKINS:** Your Honor, as to 5, 6 and 7, the
20 request is phrased "If you have denied..." But we admitted.
21 So --

22 **MR. KIDWELL:** With heavy qualification.

23 **MR. TOMPKINS:** Well --

24 **MR. KIDWELL:** And the requests for production asks for
25 evidence to support the qualification.

1 **THE COURT:** All right, something has gone wrong with
2 the documents, because I have only the requests for admission.
3 Not the requests for production.

4 (The Court examines document)

5 **THE COURT:** Oh, wait, all right. So you're saying,
6 you admitted Request No. 5, and that is why you don't have any
7 documents?

8 **MR. TOMPKINS:** Yeah, that's why we didn't supplement,
9 exactly.

10 **THE COURT:** All right. Okay. So -- response to RFA
11 -- response to RFA No. 5. Admit --

12 **MR. KIDWELL:** And you'll want to look at RFA No. 2.

13 **THE COURT:** Well, we're going to No. 5: Admit that
14 you are aware of no evidence showing -- and so on.

15 Flex objects to the undefined term. Okay.

16 Says "Denied." No. 5 says "Denied."

17 **MR. KIDWELL:** Request for Production of Documents
18 No. 5 refers to Request for Admission No. 2. So if you just
19 look up to No. 2 on the prior page.

20 **THE COURT:** What, what -- admit that you -- no
21 evidence. Things happened. Okay, where does it say "admit"?

22 **MR. TOMPKINS:** Between -- Line 14 -- so right between
23 Line 13 and 14, far left side. Says: Flex responds as
24 follows, admitted.

25 **THE COURT:** Okay. So it was admitted. What's the

1 problem?

2 **MR. KIDWELL:** So with that one, it's a -- Admission
3 No. 3 and 4 continues to have a heavy qualification.

4 **THE COURT:** Let's just take one at a time. You all
5 are playing pinball here, and I can't follow a word you're
6 saying.

7 So we are on RFA No. 2.

8 **MR. KIDWELL:** Yes. The next word after "admitted" is
9 "however."

10 **THE COURT:** RFA No. 2 says "Flex responds as follows:
11 Admitted." Period. Done. Okay?

12 **MR. KIDWELL:** "However," comma and then --

13 **THE COURT:** "However" does not count. They admit it.
14 All right? So that takes care of that.

15 **MR. KIDWELL:** I'll take it.

16 **THE COURT:** If the rest of them are like that --

17 **MR. KIDWELL:** They're not all like that.

18 **THE COURT:** They don't need to do anything else.

19 **MR. KIDWELL:** We can skip the next two, then.

20 **THE COURT:** All right, show me one that isn't like
21 that.

22 **MR. KIDWELL:** Let's go to No. 18, Request for
23 Admission 18.

24 **THE COURT:** All right. 18. Okay. All right. Says
25 it was denied. So.

1 **MR. KIDWELL:** So --

2 **THE COURT:** What RFP does that correspond to?

3 **MR. KIDWELL:** That corresponds to RFP 21.

4 **THE COURT:** 21. All right. If you denied the RFA 21
5 -- 18 -- let's see. Okay. Mister -- counsel for Flex? What's
6 the -- says you produced everything already.

7 **MR. TOMPKINS:** Your Honor, I think that the prior
8 production references and supplementation refer to many, many
9 documents responsive to this request for production. We never
10 had an opportunity to confer at this level of detail about
11 Request for Production 21.

12 **THE COURT:** We're doing it now. Your response to
13 Request 21 says: Flex responds that this evidence has already
14 been produced. So what is the problem?

15 Listen. They're going to live by their representation --

16 **MR. KIDWELL:** Your Honor, the problem is he needs to
17 tell me what it is.

18 **THE COURT:** Hold on. They're going to live by their
19 representations. All right? He says you already have it.

20 If you want to write back and say -- an interrogatory that
21 says please identify it, that's fine, you can do that. But
22 they're going to live by what they did or did not say.

23 If it turns out that they didn't proffer anything that you
24 think shows you conspired or participated in the conspiracy,
25 then that's fine.

1 **MR. KIDWELL:** Well, Your Honor, the very purpose for
2 the request is for them to say: After four years of discovery,
3 this is what we believe shows that you did something bad.

4 And it's important to AVX, Your Honor, because, you know,
5 we're not -- nobody's even claiming we're in the core
6 conspiracy. We weren't in any meetings. We're not being
7 investigated by the DOJ or any other competition agency. You
8 know, we're -- we are -- guilt by association, because we are
9 in the industry.

10 **THE COURT:** Listen --

11 **MR. KIDWELL:** So I want to know what documents --

12 **THE COURT:** Stop, stop, stop. Stop. We're just here
13 to solve the discovery issues.

14 **MR. KIDWELL:** I hear you.

15 **THE COURT:** Okay? Your request for production said:
16 If you deny RFA 18, produce all evidence.

17 The Flextronics people say: We have already produced this
18 evidence.

19 Okay? They didn't do anything inappropriate. You didn't
20 say: Identify all the evidence. You didn't say: Provide the
21 Bates range for the evidence. You said: Produce all evidence.
22 They had given it to you.

23 How much have you gotten in terms of documents? What's
24 the size of the document production?

25 **MR. KIDWELL:** From Flex, in total?

1 **THE COURT:** From Flex.

2 **MR. KIDWELL:** Over a million pages.

3 **THE COURT:** All right. If you want to fine-tune that,
4 you can do that. You can say: All right, what are the
5 documents that you believe are the evidence that you've
6 identified in Request for Production No. 21?

7 **MR. KIDWELL:** So Your Honor, in anticipation of that
8 precise suggestion, --

9 **THE COURT:** Yes.

10 **MR. KIDWELL:** -- I issued an interrogatory to
11 Flextronics last week that said: If you don't think the
12 document requests are specific enough, here's an interrogatory.

13 **THE COURT:** All right.

14 **MR. KIDWELL:** List the Bates numbers for all the
15 documents that correspond with what I asked you for.

16 **THE COURT:** All right, that sounds fine. It was a
17 week ago. He hasn't responded yet.

18 **MR. TOMPKINS:** And Your Honor, it was that
19 interrogatory that actually led us to supplement the document
20 production. The interrogatory's untimely, but we were,
21 nevertheless, supplementing in response to it.

22 We just didn't think a document production request is the
23 right vehicle for what's being sought. But we'll respond to
24 the interrogatory in course.

25 **THE COURT:** Okay.

1 **MR. KIDWELL:** Here's an easy --

2 **THE DEFENDANT:** Doesn't that solve everything?

3 **MR. KIDWELL:** Well, here's a request that's easy for
4 you to do, and easy for me to ask, which is: He can give me
5 whatever he wants, as long as Your Honor orders that he's bound
6 by it.

7 **THE COURT:** I don't have to. He is bound by it.
8 Well, Flex is bound by it. That's the Federal Rules of Civil
9 Procedure.

10 **MR. KIDWELL:** A few months from now, when we're at
11 summary judgment --

12 **THE COURT:** You can beat him like a piñata if you want
13 to. All right?

14 **MR. KIDWELL:** If he puts a document on that Rule 56
15 statement that wasn't on this response --

16 **THE COURT:** Yes.

17 **MR. KIDWELL:** -- strike it.

18 **THE COURT:** You're not going to do anything. You're
19 going to ask me to do something. But you're certainly free to
20 do that.

21 Yes.

22 **MR. TOMPKINS:** Your Honor, I do want to note that
23 discovery is ongoing. With what's happened so far --

24 **THE COURT:** Isn't discovery closing in a few months?

25 **MR. KIDWELL:** Closed today.

1 **THE COURT:** Closes today. Discovery is not ongoing
2 much longer. You've got four more hours.

3 **MR. TOMPKINS:** There are several depositions that have
4 been rescheduled or put off because --

5 **THE COURT:** That's fine. But, look. It's too late in
6 the day for you -- this thing has been churning and burning
7 since 2014.

8 **MR. TOMPKINS:** Your Honor, we're happy to respond.

9 **THE COURT:** I'm not going to accept the discovery is
10 still ongoing. This is -- the sun is about 5:30 p.m. in the
11 sky. Okay?

12 **MR. TOMPKINS:** Absolutely, Your Honor.

13 **THE COURT:** You may be technically right that there
14 are a handful of people left, but 98 percent, plus, of the
15 discovery is locked and loaded. So I'm not going accept:
16 We're still kicking the tires here and trying to figure out
17 what things look like. That is way too late in the day for
18 that.

19 **MR. TOMPKINS:** Yeah. And I'm not asking that,
20 Your Honor. We're just saying that we would like to supplement
21 with material that is not actually -- you know, deposition
22 transcripts that haven't been taken, and things like that. But
23 otherwise, we'll be bound by the answers.

24 **THE COURT:** I find that -- well, you all, I think,
25 understand where you are. Now, you're going to answer the

1 interrogatory, and then AVX, you can do whatever you think is
2 appropriate when the time comes. All right? But, of course,
3 everybody is bound by what they say and don't say. That goes
4 without saying.

5 Okay?

6 **MR. KIDWELL:** I appreciate it.

7 **THE COURT:** All right. That takes care of that.

8 No, No. 11. Why don't you two stay up here -- I'm sorry,
9 No. 10.

10 **MR. KIDWELL:** This one's quick, Your Honor.

11 **THE COURT:** Well, I have to say, I -- let me ask this.

12 I mean, Mr. Tompkins, your witness, you have an email
13 where somebody's talking about a document. And goes on for a
14 couple of paragraphs. And I guess their response is: We don't
15 know what he's talking about?

16 **MR. TOMPKINS:** Your Honor, let me go back and do some
17 backdrop on this.

18 **THE COURT:** Yes.

19 **MR. TOMPKINS:** The email that is the subject that led
20 to all of this is an email that, actually, the primary topic of
21 the email is different than the sentence that AVX is focused
22 on.

23 The sentence AVX is focused on is one sentence in the
24 second paragraph that talks about the disclosure of pricing
25 information from one supplier to another supplier.

1 Now, one thing that should be understood is the backdrop
2 of the document production in this case. You know, at the very
3 beginning of the case, we produced documents using search terms
4 and agreed-upon custodians that were designed to catch anything
5 that had to do with capacitors. For instance, if it had the
6 word "capacitors" in it, or if it was in the possession of
7 custodians that dealt with capacitors and the like. And that's
8 why they were well over -- I think close to two million
9 documents produced. So there is already a heavy presumption
10 that this particular reference to the disclosure of a pricing
11 issue has nothing at all to do with capacitors.

12 However, in an effort to respond to this and avoid this
13 argument here, we actually invested lots and lots of time
14 trying to figure out what was the reference in Mr. Linton's
15 email, because Mr. Linton at his deposition could not recall
16 it.

17 And to put this in context, he is the director of
18 procurement at Flex. So he is in charge of procuring
19 everything that Flex procures, which is much more than
20 capacitors. So the odds that this would be about capacitors or
21 even passive components is low to start out with. And it would
22 be even lower if we had caught it -- we would have caught it in
23 our documents production the first time.

24 Nevertheless, we spent, you know, well over -- well,
25 "scores" is what I wrote -- well over 50 or 60 hours of

1 attorney time, as well as a lot of Flex's time, itself, going
2 through a page-turning review of all of the investigation
3 files, trying to find what the reference was.

4 And we did find, following the review, that there was an
5 investigation where the results of the investigation were
6 forwarded to Mr. Linton in November, and then again, there was
7 a followup that went to him two weeks before this email on
8 February 13th.

9 And that investigation involved a person who was in charge
10 of obtaining trucking services in Mexico, and apparently had
11 told one trucking supplier the other trucking supplier's price,
12 because she was in close relationship with the other supplier
13 and was trying to give them an advantage. And she was
14 disciplined -- actually, eventually she was terminated, and the
15 junior person was disciplined. And we have every reason to
16 believe, based on the interviews that we conducted and the
17 review that we have conducted, that this is the instance being
18 referenced.

19 I certainly have no information to believe that it has
20 anything at all to do with capacitors, passive components, AVX,
21 anything -- or any other defendant. If it did, we would have
22 found it in our first search.

23 So at this point, our position is that we have invested
24 more than enough time in this issue, trying to figure out what
25 this is about. And, I'm not sure what else I would do at this

1 point. I mean, I have talked to every single person who's on
2 these emails. And these are very high-level people. A
3 director of procurement, VP of finance, chief compliance
4 counsel, you know, chief procurement counsel. And nobody has
5 any specific recollection of what this was about.

6 **THE COURT:** All right. Well, let me just jump in.

7 So they don't have anything.

8 **MR. KIDWELL:** So I have asked for the details of who
9 was asked, and whose files were searched, and what files were
10 searched, and how. And you know as much as I do about that
11 right now, Your Honor.

12 **THE COURT:** Did you get the whole story about the
13 trucking thing?

14 **MR. KIDWELL:** I did hear the thing about the trucking
15 thing, although a trucking contract in Guadalajara doesn't
16 usually result in a corporate-wide complaint --

17 **THE COURT:** Well, that's the position they are taking.
18 What else would you like to know?

19 **MR. KIDWELL:** I'd like to know what they actually did.
20 I'd like to know if they went and talked to the AVX -- the
21 people who were in charge of procuring from AVX.

22 And here's why I'm pressing this issue, Your Honor.
23 Thirteen AVX employees have been deposed in this case. And
24 from time to time, someone will find out that someone at AVX
25 knew what the bids were from somebody else in a particular bid.

1 And the question was: How did you know that?

2 And they said: Because the Flex procurement official told
3 me.

4 **THE COURT:** Okay.

5 **MR. KIDWELL:** Flex procurement officials are known to
6 hand out this information, for whatever reason that they
7 personally think it benefits them to do so.

8 **THE COURT:** They're known for that?

9 **MR. KIDWELL:** I'm sorry?

10 **THE COURT:** They're known for that?

11 **MR. KIDWELL:** They are known for that.

12 **THE COURT:** All right.

13 **MR. KIDWELL:** And so, to find that there's been an
14 internal investigation on this precise issue, I'm skeptical
15 that it's just about one trucking contract in Guadalajara,
16 Mexico.

17 **THE COURT:** I don't know what else I can do. I
18 understand you're skeptical, but that is not a basis for next
19 steps. You have to show me something else.

20 **MR. KIDWELL:** So a list of whose files were searched,
21 who was talked to, how they were searched would be a good
22 start.

23 **MR. TOMPKINS:** Your Honor, we've provided lists of all
24 of the custodians whose files were searched. And he has had --
25 AVX has had years to depose whoever they wanted to who had

1 responsibility for purchasing capacitors from AVX, purchasing
2 passive components for AVX. They took a couple of depositions;
3 they didn't take any more. And discovery, as you just
4 mentioned, is closed.

5 **THE COURT:** Did you depose Mr. Linton?

6 **MR. KIDWELL:** I'm sorry?

7 **THE COURT:** Did you depose Mr. Linton?

8 **MR. KIDWELL:** I did. I issued a 30(b)(6) on this
9 topic (Indicating). With that, I issued a 30(b)(1). We
10 discussed and agreed Mr. Linton would be perfect for the
11 30(b)(6) and the 30(b)(1).

12 Morning of the deposition, it's disclosed me Mr. Linton's
13 done no prep at all, isn't familiar with the topics that he's
14 is going to be discussing that day, and could only talk off the
15 very top of his head about: I don't know; this was a long time
16 ago.

17 **MR. TOMPKINS:** Your Honor, we did offer to provide a
18 30(b)(6) witness on this topic. First, Mr. Linton testified to
19 the best of his knowledge.

20 **THE COURT:** All right, just, you put what you told me
21 about the truck thing into an interrogatory response that
22 somebody executes, under penalty of perjury, at Flextronics.
23 That's what you're going to have. If it turns out to be wrong,
24 there will be an accounting. Okay?

25 **MR. KIDWELL:** I can live with that.

1 **THE COURT:** All right, that takes care of that.

2 All right, let's see, No. 11, Hitachi employees. Have
3 that done in one week, please, Mr. Tompkins.

4 **MR. TOMPKINS:** Yes, Your Honor.

5 **MR. BANK:** Jeff Bank for Hitachi.

6 **MR. WAGNER:** Scott Wagner for Avnet, ASI and
7 Benchmark.

8 **THE COURT:** Yes. Please.

9 **MR. WAGNER:** So, Your Honor, we're seeking to take the
10 deposition of two Hitachi witnesses, Takahide Osumi and Mitsugo
11 Yamamoto. Mr. Osumi is a current employee; Mr. Yamamoto is a
12 former employee. But we understand from Hitachi's counsel that
13 they still have control over him.

14 They have a novel theory for why these gentlemen should
15 not have to appear for deposition. And that is that they get
16 to dictate to us how we are going to prosecute our case, and
17 who's depositions we can take.

18 **THE COURT:** Let me just jump in.

19 Okay. They'll take the Fifth. That's fine. But they --
20 you know, there's a whole format for taking the Fifth, and
21 there are consequences for taking the Fifth that they would
22 like to have a clear record for, so they're going to have to
23 go. Right? So.

24 **MR. BANK:** Your Honor, Hitachi Chemicals only left in
25 certain opt-out cases. And some opt-outs obviously entered

1 this litigation at a late stage. We worked with those opt-outs
2 to come to an agreement that those opt-outs would review the
3 discovery record taken in this case to date, and they would
4 only propound unique non-duplicative discovery.

5 In multiple meet-and-confers, we asked Avnet, ASI and
6 Benchmark's counsel what exactly is it about these two
7 witnesses that would be unique and non-duplicative. We never
8 got an answer to that.

9 In addition, Hitachi Chemical is producing two percipient
10 witnesses in the United States to give substantive testimony,
11 and those two witnesses overlap with the witnesses sought by
12 the Avnet defendants.

13 On top of that, Hitachi Chemical is producing 30(b)(6)
14 witnesses in the United States to testify in response to the
15 Avnet defendants' and Flextronics defendants' requests.

16 The topics that the Avnet defendants and Flextronics
17 issued to Hitachi Chemical in their 30(b)(6) request cover
18 every topic under the sun that they could ask those two
19 witnesses in Hong Kong. Therefore, we think the depositions
20 are unnecessary.

21 But at a minimum, we should go through these four
22 depositions that Hitachi Chemical has been willing to go
23 forward with in the United States, substantive depositions, and
24 then determine if there are any topics left, then force
25 everyone to go out to Hong Kong to take these Fifth-Amendment

1 depositions.

2 **THE COURT:** I'm sorry; is it Mr. Wagner?

3 **MR. WAGNER:** Yes.

4 **THE COURT:** So was there a deal about fine-tuning the
5 discovery and --

6 **MR. WAGNER:** There was a deal. And what the deal was
7 and what Mr. Bank is referring to are written discovery
8 requests. That we would not issue duplicative discovery
9 requests of what was prior -- was served by other plaintiffs in
10 the case.

11 With respect to depositions, what we said was (As read):

12 "We agree that we cannot issue a notice of deposition
13 pursuant to 30(b)(1) to any witness who has
14 previously sat for a deposition in the California
15 action..."

16 Which was this case. We did this while we were still out
17 in Arizona. These witnesses have not sat for a deposition.
18 We're well within -- we agreed to the 10-deposition limit per
19 family.

20 **THE COURT:** They have not been deposed.

21 **MR. WAGNER:** They have not been deposed. We are
22 within the deposition limits. Just because there might be
23 overlap of a 30(b)(6) deposition doesn't mean that we're not
24 entitled to the 30(b)(1) depositions.

25 And we believe these individuals actually do have

1 knowledge that is separate and apart from any witness that
2 Hitachi has produced to date, or will be producing. I mean,
3 there's only been four Hitachi depositions to date in this
4 case.

5 **THE COURT:** All right.

6 **MR. BANK:** Your Honor, may I respond?

7 **THE COURT:** Yes.

8 **MR. BANK:** First of all, there have been more than
9 four Hitachi depositions to date. There have been a number of
10 percipient witness depositions, as well as over 30 hours of
11 30(b)(6) testimony.

12 What Avnet agreed to was, quote (As read):

13 "Avnet further agrees that it will review all
14 discovery produced by defendants to date prior to
15 propounding its own discovery, to ensure that the
16 discovery sought from defendants is not duplicative."

17 With regards to the two individuals that they are seeking
18 now, one of them, Mr. Yamamoto, was CEO of the American
19 subsidiary for two years.

20 **THE COURT:** Well, let me -- look. It's two different
21 people. If they haven't been deposed before, go ahead and do
22 it, do your thing. Okay?

23 **MR. WAGNER:** Thank Your Honor.

24 **THE COURT:** So depositions are ordered.

25 Let's see, No. 12. Oh, there is no No. 12. Just a status

1 update.

2 **MR. ZAPALA:** Just a status update.

3 **THE COURT:** Yes. Excellent.

4 **MR. ZAPALA:** I don't know if Mr. Williams has anything
5 else to add, but we have been meeting and conferring with the
6 defendants. We have not submitted an agreed-upon schedule to
7 Your Honor yet, but it is with the defendants. We sent it this
8 week. We expect to get comments back. We're continuing the
9 process.

10 **THE COURT:** Okay, you probably need time to think it
11 over. So maybe next week?

12 **MS. LAU:** Your Honor, the defendants actually request
13 the Court's guidance with respect to one issue.

14 So, we did receive a revised case schedule from the
15 plaintiffs on Monday night. One of the important aspects of
16 this case schedule which we hadn't discussed, and appeared for
17 the first time in this proposal, is that the DPPs have split
18 off from the IPPs and the direct action plaintiffs, and in
19 fact, proposed two double-track schedules. Including for all
20 expert submissions, summary-judgment motions, et cetera,
21 et cetera.

22 And the defendants have repeatedly understood the Court to
23 explain that there is just one train. And in fact, at a
24 hearing in July 2014, the defendants, certain of them, had
25 raised early summary-judgment motions, if you will. And the

1 Court was very explicit. In fact, you said there is only going
2 to be one summary judgment deadline for global motions with a
3 unified brief, and that there would not be any space for any
4 other summary-judgment motions.

5 It's defendants' distinct preference to have a single
6 schedule for all plaintiffs --

7 **THE COURT:** It was probably aspirational, rather than
8 a case management -- look. I don't have -- you all work it
9 out. If you can't work it out, I'll have you back in. I can't
10 do this. I don't even have the schedule, so I can't --

11 **MR. WILLIAMS:** And one thing I should make clear,
12 though, is that the most important part of the train is the
13 Court, and there's no separate schedule. This is only as to
14 the briefing between the parties.

15 **THE COURT:** Yes.

16 **MR. WILLIAMS:** But once the summary-judgment replies
17 come in, that's the same date, and everything from that date
18 forward is the same date. And the Court doesn't have any
19 separate tracks.

20 **MS. LAU:** Well --

21 **THE COURT:** Let me just ask you this, though.

22 What I'm more concerned about -- first, I have a couple of
23 big things I have to get out which will be as soon as I can;
24 I'll be putting our very scarce resources to that next. So I
25 can't promise you a date, but they are in the hopper.

1 But, now, Arrow has arrived.

2 **MR. SINGER:** Yes, Your Honor.

3 **THE COURT:** And how are we going to integrate Arrow in
4 an efficient fashion?

5 Tell me about Arrow. So were you -- you're completely new
6 counsel, right?

7 **MR. SINGER:** Yes.

8 **THE COURT:** Okay.

9 **MR. SINGER:** We are representing Arrow Electronics,
10 Inc. It's a distributor. It's filed suit April 16 --

11 **THE COURT:** In Florida? Where'd you file?

12 **MR. SINGER:** In Denver.

13 **THE COURT:** Denver, okay.

14 **MR. SINGER:** Which is where Arrow is headquartered.

15 **THE COURT:** Okay.

16 Well, Mr. Zapala and Mr. Williams, how do you plan to
17 accommodate Arrow?

18 Arrow's a DPP, I take it?

19 **MR. SINGER:** We are a direct -- an opt-out who has a
20 direct purchase --

21 **THE COURT:** All right.

22 **MR. SINGER:** And we have been discussing with counsel
23 for the defendants, and we think we have an agreement which
24 will be reduced to a stipulation, that they will accept
25 service. We agree to be bound by this discovery schedule. We

1 understand we're a latecomer to that process.

2 **THE COURT:** All right.

3 **MR. SINGER:** And, you know, we recognize that.

4 **THE COURT:** All right. So there's nothing --
5 you're -- you're integrated.

6 **MS. LAU:** Yes. Your Honor --

7 **MR. ZAPALA:** Sounds easy, Your Honor.

8 **THE COURT:** Is that the practical punchline? You're
9 integrated? We don't have to do anything else?

10 **MR. ZAPALA:** We didn't get notice of Arrow's
11 involvement until after we set the schedule. So if
12 Mr. Singer's representing he has no problem being wrapped into
13 the schedule that we're currently negotiating with the
14 defendants, we have no problem.

15 **THE COURT:** Is that right, Mr. Singer?

16 **MR. SINGER:** That's correct.

17 **THE COURT:** Okay. Well, that was good.

18 Yes.

19 **MR. WAGNER:** There was separate fact discovery
20 deadlines for certain of the opt-outs, which is not today, but
21 a month from today.

22 **THE COURT:** No, I understand.

23 **MR. SINGER:** Yeah, that's the part that --

24 **THE COURT:** Okay. So work it out. And if you can't,
25 you know, you can come and see me.

1 Okay?

2 **MS. LAU:** Your Honor --

3 **THE COURT:** Yes.

4 **MS. LAU:** -- there is one additional case, and I don't
5 see that counsel are present for TTI Mouser, but we are going
6 to work with that entity to make sure that they are similarly
7 roped into the existing schedule.

8 **THE COURT:** Who is that? Is that a new case?

9 **MR. ZAPALA:** I know just from discovery in the case
10 that they're direct-purchaser distributors. I don't know where
11 they filed their case.

12 **MS. LAU:** And it doesn't appear that their counsel is
13 present to speak for them.

14 **THE COURT:** I haven't got an MDL notice from the
15 court.

16 **MR. WAGNER:** They filed here.

17 **THE COURT:** They filed directly here? Do you know
18 when?

19 **MR. WAGNER:** Maybe about a month ago.

20 **MS. LAU:** Yeah, in ND Cal.

21 **MR. PAPENDICK:** It was two weeks ago. And none of the
22 defendants have been served. My colleague reached out to their
23 counsel to inform them.

24 **THE COURT:** Do you know who the lawyer is?

25 **MR. PAPENDICK:** I personally don't.

1 **THE COURT:** But somebody at your firm does?

2 **MR. PAPENDICK:** Someone in my firm, yes.

3 **THE COURT:** Do you all know who the attorney is for
4 the plaintiff?

5 **MR. ZAPALA:** I don't, offhand. I'll take a look.
6 It's possible we've had negotiations with that attorney over
7 third-party discovery.

8 **THE COURT:** Whoever it is, they need to file a notice
9 of related case, like -- they should have filed it already.
10 But they should file it right away.

11 Okay?

12 **MR. ZAPALA:** Okay.

13 **THE COURT:** All right. Well, we've got a lot done
14 today.

15 **MR. WAGNER:** Thank Your Honor.

16 **THE COURT:** I'm not going to ask if there's anything
17 else. All right, thank you.

18 **MS. LAU:** Thank you, Your Honor.

19 **THE CLERK:** All rise. Court's in recess.

20 (Proceedings concluded)
21
22
23
24
25

CERTIFICATE OF REPORTER

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Belle Ball

/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RDR

Thursday, May 10, 2018